STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re:)	MPC 15-0203	MPC 110-0803
)	MPC 208-1003	MPC 163-0803
David S. Chase,)	MPC 148-0803	MPD 126-0803
)	MPC 106-0803	MPC 209-1003
Respondent.)	MPC 140-0803	MPC 89-0703
)	MPC 122-0803	MPC 90-0703
)		MPC 87-0703

RESPONDENT'S MOTION TO RECONDISER

Respondent, David S. Chase, M.D., through counsel, hereby requests the Board to reconsider its March 31, 2004 Order to the extent it declined to remedy the State's improper request that third-party witnesses not speak with Dr. Chase or his attorneys outside of the State's presence and absent a formal deposition subpoena. In support of his Motion, Dr. Chase submits the following Memorandum. Dr. Chase does not request a separate hearing on this Motion unless the Board deems such a hearing necessary.

MEMORANDUM

On February 17, 2004, Dr. Chase filed a Motion to Reinstate License and to Dismiss Superceding Specification of Charges. As one argument in favor of dismissal and reinstatement, Dr. Chase argued that the State had violated his due process rights when it sent letters to 27 of its most important witnesses requesting that they not speak with Dr. Chase's attorneys outside the presence of the State and absent a formal deposition subpoena.

On March 31, 2004, the Board issued an Order denying Dr. Chase's Motion to Dismiss the Superceding Specification of Charges and granting Dr. Chase's Motion to Reinstate License. In its Order, the Board recognized, as has that the Vermont Supreme Court, that "counsel for all parties have a right to interview an adverse party's witness, the witness willing, in private, without the presence of or consent of opposing counsel." (Order at 2 (citing Schmitt v. Lalancette, 2003 VT 24, ¶ 13 (Vt. S.

Ct. 2003.) Implicit in the Board's order was a determination that the State's letters to its witnesses had compromised Dr. Chase's right to interview relevant witnesses. (Id.) However, the Board determined that the injury caused by the State's letters could still be remedied through future interviews, depositions, and cross examination. (Id.) The Board urged Dr. Chase to "continue to pursue such interviews" and noted that he could "discuss[] with the witnesses" the Board's views regarding his right to speak with consenting witnesses outside the presence of the State. (Id.) The Board did not take the step of directly informing the State's identified witnesses, or requiring the State to inform those witnesses, that they may speak with Dr. Chase if they wish and that the State's request to the contrary was against the rules and should be ignored.

Dr. Chase continues to believe that the harm inflicted by the State's letters to its witnesses cannot be remedied through any action short of dismissal. However, even accepting the Board's determination that dismissal is not warranted at this time, the Board must take stronger remedial action if it is to even begin to counteract the prejudice done to Dr. Chase by the State's improper obstruction of his right to speak with consenting witnesses. As discussed at length in Dr. Chase's Motion to Dismiss and Reply Memorandum, the State has effectively informed its witnesses that they belong to the State, that they should not speak with Dr. Chase without an Assistant Attorney General present, and that Dr. Chase is acting improperly in attempting to contact them directly. As powerfully demonstrated by the deposition testimony of Dr. Vincent DeVita, the vast majority of those witnesses almost certainly now believe that they have an obligation to abide by the State's request, which was communicated on the official letterhead of the Attorney General of the State of Vermont.

Because the State has effectively asserted its inherent power over these witnesses and has painted Dr. Chase as the bad guy, nothing that Dr. Chase's lawyers say or do is likely to persuade the witnesses to ignore the State's formal request that they not consent to be interviewed. Indeed, in light of the State's request, Dr. Chase risks further alienating and annoying these witnesses by attempting to

interview them directly because these attempts will be viewed, incorrectly, as against the rules and against the directions provided by the State.

In order to enhance the possibility that Dr. Chase is able to exercise his right to interview

consenting witnesses, as recognized by both the Board and the Supreme Court, this Board must take

additional remedial action. The State's witnesses must be informed by the Board or by the State itself

that they are free to speak with Dr. Chase's attorneys if they like. In addition, to begin to remedy the

State's prior improper efforts to discourage witnesses from speaking with Dr. Chase's counsel, those

witnesses must now be encouraged to do so. Only by directly sending such a communication, or

mandating such a communication from the State itself, can this Board even start to level the playing

field that the State has improperly tilted in its favor.

As a result, Dr. Chase respectfully requests that the Board reconsider its March 31, 2004 Order

and either directly inform the State's witnesses, or require the State to inform its witnesses, that they

may speak with Dr. Chase's attorneys in informal interviews outside the presence of the State and that

the Board encourages them to do so.

Dated at Burlington, Vermont, this 14th day of April 2004.

SHEEHEY FURLONG & BEHM P.C. Attorneys for DAVID S. CHASE, M.D.

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STATE OF VERMONT CHITTENDEN COUNTY, SS.

In Re:)	Superior Court Docket No.
David S. Chase, MD)	Medical Practice Board Docket No. 15-0203

CERTIFICATE OF SERVICE

I, Eric S. Miller, counsel for Respondent David S. Chase, do hereby certify that on April 14, 2004, a copy of Respondent's Motion Reconsider was served by United States first class mail to:

Joseph L. Winn, Esq. ATTORNEY GENERAL'S OFFICE 109 State Street Montpelier, VT 05609-1001

Dated: April 14, 2004.

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